HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.528 of 2007

Between:

Mir Sajjad Ali Khan and four others

... Appellants

And

The Special Officer and Competent Authority,
Urban Land Ceiling, 11-5-399, Red Hills,
Hyderabad and four others

... Respondent

::JUDGMENT::

Counsel for the appellants : Shri Mohammed Imran Khan

June 26, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 22-3-2007 passed by the learned Single Judge in Writ Petition No. 5811 of 2007, whereby he declined to entertain the appellants challenge to order dated 16-12-2005 passed by the Special Officer and Competent Authority, Urban Land Ceiling (respondent No.1) on the ground of availability of an effective alternative remedy under Section 33 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act').

Mir Liaqat Ali Khan, father of appellant Nos.1, 2 and 4 is said to have purchased plot No.6 measuring Ac.2.00 comprised in Survey No.58 situated at Bahaloolkhan Guda Village of Amirpet Mandal

(presently Erragadda) vide registered sale deed dated 23rd Abad 1342 Fasli. He is said to have leased out the same to Royal Air Force in the first instance and then to the Director, Medical and Health Services, Andhra Pradesh. The appellants filed civil suit (O.S.No.2787 of 1999) in the Court of IX Junior Civil Judge, City Civil Court, Hyderabad for eviction of respondent Nos.2, 3 and 5. The same was dismissed by the trial court on 29-9-2006. The appeal filed against the judgment and decree of the trial court is said to be pending adjudication.

In 1976, the appellants filed declarations under Section 6(1) of the Act. After due enquiry, respondent No.1 issued draft declaration under Section 8(1) wherein he recorded that the appellants were holding surplus land measuring 1697 square meters. The draft declaration was duly served on the appellants. One of them i.e. appellant No.1, filed a petition on 3-7-1985 raising certain objections, but the same was not accepted by respondent No.1, who passed final order on 16-12-2005 under Section 8(4) of the Act. Respondent No.1 noted that as per town survey land records, old Survey No.58 (new Survey No.127) is classified as government poramboke and held that the declarants do not have any title over the property.

The appellants challenged the aforementioned order in Writ Petition No.5811 of 2007, which was dismissed by the learned Single Judge with an observation that the petitioners can avail remedy before the civil court for adjudication of their claim over the property and as against order dated 16-12-2005, they can avail remedy of appeal.

Sri Mohammed Imran Khan, learned counsel for the appellants, heavily relied on the xerox copy of sale deed dated 22/12/1342 Fasli and argued that the learned Single Judge committed a serious error by refusing to entertain the appellants' prayer for quashing order dated 16-12-2005 ignoring the fact that the same was entirely founded on report dated 9-12-2005 sent by Collector, Hyderabad District. Learned counsel emphasised that the draft declaration sent by respondent No.1 did not contain any indication that

the land in question is being treated as government poramboke and without putting the appellants to notice, respondent No.1 could not have declared the same as government land. He further argued that the remedy of appeal cannot be treated as an effective alternative remedy because the appellate authority cannot decide the question of title.

In our opinion, there is no merit in the arguments of the learned counsel. Section 33 of the Act, which provides for remedy of appeal, reads as under:

> **"33. Appeal**.- (1) Any person aggrieved by an order made by the competent authority under this Act, not being an order under section 11 or an order under sub-section (1) of section 30, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to such authority as may be prescribed (hereafter in this section referred to as the appellate authority):
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> Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
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> (2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, pass such orders thereon as-it deems fit as expeditiously as possible.
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> (3) Every order passed by the appellate authority under this section shall be final."

A reading of the plain language of the above reproduced provision makes it clear that any person aggrieved by an order made by the competent authority (in this case, respondent No.1) can prefer an appeal to the prescribed authority except when such an order is made under Section 11 or Section 30(1). The period of limitation for filing appeal is thirty days from the date on which the order sought to be appealed against is communicated. Proviso to sub-section (1) empowers the appellate authority to entertain the appeal after expiry of thirty days if it is satisfied that the appellant was prevented from filing appeal due to sufficient cause.

In our opinion, the remedy of appeal available to the appellants

under Section 33 is an effective alternative remedy because that section constitutes an integral part of the scheme of the Act and the learned counsel has not been able to show any extraordinary reason which may justify departure from the settled law that the High Court will not entertain petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the petitioner.

The rule of alternative remedy, which has been evolved as one of the several rules of self-imposed restraints, is now well established and the Constitutional Courts are extremely reluctant to entertain a petition filed under Article 226 of the Constitution of India if an effective alternative remedy is available to the aggrieved person.

In **A.V. Venkateshwaran v. R.S. Wadhwani**[1], the Constitution Bench of the Supreme Court, while reiterating the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, exhaust the other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition, but is a rule evolved by the Courts for the exercise of their discretion, observed as under:

> "The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art. 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with

rigidity in every case which comes up before the court."

In **Thansingh Nathmal v. Superintendent of Taxes**[2], another Constitution Bench of the Supreme Court considered the question relating to exercise of discretion by the High Court in entertaining a writ petition despite the availability of alternative remedy and held:

> "The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

In **Baburam v. Zilla Parishad**[3], the Supreme Court reiterated the rule of alternative remedy in the following words:

> "When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be

remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

The courts have carved out the following three exceptions to the rule of alternative remedy. These are –

i) where the writ petition seeks enforcement of any of the fundamental rights;

ii) where there is failure of the principles of natural justice, and

iii) where the orders or proceedings are wholly without jurisdiction or the vires of a legislative instrument is challenged.

The case of the appellants does not fall in either of the above noted exceptions. Therefore, we see no reason to interfere with the discretion exercised by the learned Single Judge not to entertain the writ petition.

We are further of the view that the appellants are not entitled to relief under Article 226 of the Constitution because they have not approached the Court with clean hands. The judgment of civil suit filed by them in the Court of IX Junior Civil Judge, City Civil Court, Hyderabad, draft declaration prepared by respondent No.1 under Section 8(1), which was served on the appellants along with notice issued under Section 8(3) of the Act and objection petition filed by appellant No.1 have direct bearing on the adjudication of their right over the land in question. However, the appellants deliberately omitted to file copies of these documents. It can reasonably be presumed that they have done so with a view to keep the Court in dark about the true nature of the suit filed by them, the findings recorded by the trial court and the nature of the objections filed by them

to the draft declaration.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.1014 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

June 26, 2007

C.V. NAGARJUNA REDDY, J

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[1] AIR 1961 SC 1506

[2] AIR 1964 SC 1419

[3] AIR 1969 SC 556